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Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
New York, 24-28 May 2010

Note verbale dated 20 May 2010 from the Permanent Missions of Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru to the United Nations addressed to the Secretariat

The Permanent Missions of Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru to the United Nations present their compliments to the Secretariat (Division for Ocean Affairs and the Law of the Sea) and have the honour to refer to the upcoming Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Fish Stocks Agreement), to be held from 24 to 28 May.

In that connection, the undersigned Permanent Missions are pleased to announce that following a joint meeting of the members of the Permanent South Pacific Commission, the Latin American Organization for Fisheries Development and the Organization for the Central American Fisheries and Aquaculture Sector, held in Lima on 5 May 2010, the Lima Declaration of 5 May 2010 was signed in anticipation of the Review Conference on the Fish Stocks Agreement (see annex).

The members of the Permanent South Pacific Commission are Chile, Colombia, Ecuador and Peru. The members of the Latin American Organization for Fisheries Development are Belize, Bolivia, Costa Rica, Cuba, Ecuador, El Salvador, Guyana, Honduras, Mexico, Nicaragua, Peru and Venezuela (Bolivarian Republic of). The members of the Organization for the Central American Fisheries and Aquaculture Sector are Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

The undersigned Permanent Missions should be grateful if the Secretariat would have the present note and its annex circulated as a document of the Review Conference.

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Annex to the note verbale dated 20 May 2010 from the Permanent Missions of Chile, Colombia, Costa Rica, Ecuador, Mexico and Peru to the United Nations addressed to the Secretariat

Lima Declaration of 5 May 2010

Joint declaration of the States members of the Permanent South Pacific Commission, the Latin American Organization for Fisheries Development and the Organization for Central American Fisheries and Aquaculture Sector for the resumption of the Review Conference on the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks ("the Agreement"), New York, 24-28 May*

Considering that:

1. In accordance with the provisions of article 36 of the Agreement and the decisions taken in the first part of the 2006 Review Conference and subsequent agreements, the Conference was convened and is to be resumed from 24 to 28 May 2010 at United Nations Headquarters in New York;

2. In accordance with article 36, our countries have been invited to participate in the resumed Review Conference together with States parties to the Agreement;

3. At the 2006 Review Conference, the States members of the Permanent South Pacific Commission, together with several members of the Latin American Organization for Fisheries Development and Argentina, transmitted, by a note verbale, a declaration requesting the Review Conference to state its position on explanatory or interpretive principles in respect of articles 4, 5, 6, 7, 21, 22 and 23 of the Agreement;

4. The 2006 Review Conference issued an Outcome, four informal consultations of the States parties and non-parties to the Agreement were subsequently held, and, at the ninth round of informal consultations, a report of the Secretary-General of the United Nations, prepared in cooperation with the Food and Agriculture Organization of the United Nations (FAO) and made available to the resumed Conference to assist it in discharging its mandate, was added to the documentation;

Declare that they:

I

1. Reaffirm the importance of adequate and effective management of straddling fish stocks and highly migratory fish stocks on the high seas;

2. Accordingly, express their interest in the Agreement and their desire to contribute to its improvement so that the greatest number of States may participate

* By a note verbale dated 21 May 2010, the Permanent Mission of Peru to the United Nations informed the Secretariat that the Permanent Mission of Guatemala to the United Nations wished to associate itself with the contents of the Lima Declaration of 5 May 2010 in connection with its circulation at the Review Conference.

in it and make progress towards its universality, as well as their decision to take part in its review process;

3. Wish to express their main observations in this forum, without prejudice to the further development and explicit statement of their positions at the appropriate time.

II

1. Reaffirm, firstly, the aforementioned Declaration of 22 May 2006 and its eight points, in particular, their request that:

(a) The Review Conference duly comply with the provisions of article 4 of the Agreement, which establishes that it shall be interpreted and applied in the context of and in a manner consistent with the United Nations Convention on the Law of the Sea (article 4);

(b) Articles 5, 6 and 7 of the Agreement be interpreted in a manner that is not incompatible with the sovereign rights of a coastal State for the purpose of exploring and exploiting, conserving and managing straddling fish stocks and highly migratory fish stocks within the 200 mile maritime zone under its national jurisdiction, and without prejudice to the full applicability of the aforementioned article 4 and article 116 of the United Nations Convention on the Law of the Sea (articles 5 and 6);

(c) The full sovereignty of the port State over its maritime terminals be reaffirmed (article 23);

(d) Alternative systems of surveillance and monitoring be considered for boarding and inspection addressed in articles 21 and 22 (articles 21 and 22);

(e) The Review Conference reaffirm the fundamental principle of compatibility contained in the United Nations Convention on the Law of the Sea and set out in article 7 of the Agreement, with specific reference to the high seas and the necessity of not applying measures in the high seas that might undermine the efficacy of the measures applied to straddling fish stocks and highly migratory fish stocks by the coastal State.

III

1. In relation to the very important first request contained in the aforementioned note verbale of May 2006, they express their gratitude for the strong affirmation in the preamble of the Outcome of the 2006 Review Conference that:

(a) The United Nations Convention on the Law of the Sea and the Agreement provide the legal framework for conservation and management of straddling fish stocks and highly migratory fish stocks;

(b) The Review Conference emphasized that all provisions of the Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention; and they

(c) Reiterate the importance of the "continuing dialogue" established in paragraph 56 (f) of the Outcome of the 2006 Review Conference to address concerns raised by States non-parties regarding, in particular, articles 4, 7, 21, 22

and 23 of the Agreement. This dialogue is pending or unfinished and should be included in the work of the current phase;

(d) Have noted that the Outcome mentions compatibility, port States and other issues which, while insufficient, are moving closer to the positions of many coastal States or simply those with an interest in maintaining resources;

(e) Further appreciate the references in the reports on the informal consultations, particularly the ninth round of informal consultations, and in the report of the Secretary-General of the United Nations prepared in cooperation with FAO, to the importance of regional fisheries management organizations (RFMOs) as a tool for use by countries in their efforts to conserve and manage straddling fish stocks and highly migratory fish stocks. In that connection, the specific reference to the active participation of the Latin American countries in the relevant RFMOs is a positive and vital development;

(f) Consider it significant that the aforementioned reports highlight the binding FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, which establishes minimum standards for the adoption of effective port State measures, as one of the major achievements since the 2006 Review Conference.

IV

They have stated the following with respect to some key aspects of the draft organization of work for the resumed Review Conference to be held from 24 to 28 May 2010:

1. With regard to the first paragraph, containing the question on "areas in which implementation of the recommendations adopted at the Review Conference in 2006 are proceeding well", they:

(a) View as positive the adoption of a binding Agreement on measures that sovereign port States can apply in combating illegal, undeclared and unregulated fishing is a positive step. In particular, port States could take additional measures, beyond those set out in the FAO Agreement;

(b) Also note FAO efforts to establish a global registry of fishing vessels, a single vessel identification number and better catch and other statistics, in which FAO plays a very important role. They also recognize the efforts of the Central American region in establishing a binding fishing vessels registry;

(c) Urge countries to adopt national, regional and international measures to ensure that the various regional fisheries management organizations (RFMOs) meet the goals for which they were created. To that end, they believe that a firmer commitment by States parties to the work of each RFMO is called for, and that differences between developed and developing countries must be recognized and differential treatment must be given to the developing countries;

Strict compliance with the provisions of paragraph 2 (c) of article 24 of the Agreement, which highlight the need to refrain from adopting measures that transfer, directly or indirectly, a disproportionate burden of conservation action onto developing States, must be ensured;

(d) Consider as a favourable development for the proper governability of the oceans the creation of additional RFMOs and, as indicated, the one recently agreed upon for the South Pacific — the South Pacific Regional Fisheries Management Organization (SPRFMO) — and they echo the appeals by the ninth round of informal consultations in that regard;

(e) Appreciate the performance evaluation process which a large number of RFMOs have undergone and stress that improvement is necessary;

(f) Note with interest and appreciate the progress achieved in the application of the precautionary approach in order to ensure long-term conservation of straddling fish stocks and highly migratory fish stocks and marine ecosystems and stress the need to specify the concept and the implementation of the ecosystem approach.

2. Regard to the second paragraph on "areas in which has there been little progress in implementation of the recommendations":

(a) View with great concern the situation of the status of straddling fish stocks and highly migratory fish stocks, and related species, as indicated in the report of the Secretary-General and FAO of 4 January 2010, in particular for the countries of the South Pacific — the critical situation of the species mentioned in that report, which are subjected to excessive levels of fishing, as in the case of the Chilean jack mackerel and other species mentioned in that report;

(b) Regret the lack of progress towards an urgently needed reduction in the global fishing capacity, as called for by the 2006 Review Conference; and in that connection, that so little progress has been achieved with regard to the problem of subsidies that are not related to food security of developing countries and that encourage overfishing and excess capacity in major fishing fleets operating on the high seas, as indicated in the report of the Secretary-General;

(c) Note with concern that a number of States are not motivated to allow scientific research on living resources and ecosystems in the high seas, despite the provisions of article 5 (k) and, hence, that there is very little to guarantee that conservation and management measures are based on reliable scientific data;

(d) Note that progress in the related regulations pertaining to the activities of flag States was also insignificant and regret that to this day, it has not been possible to launch the negotiation of a binding Agreement that would allow for the effective implementation of flag State obligations arising from the United Nations Convention on the Law of the Sea and the Agreement, replicating the model forming the basis for the FAO Binding Agreement on Port State Measures. Measures must be adopted to strengthen the genuine ties between the flag State and the vessels flying its flag;

(e) Note with concern that the RFMO performance evaluation has brought to light serious difficulties that some RFMOs are experiencing in their efforts to achieve their objectives of sustainable conservation and management of the resources they administer, owing mainly to the lack of effective compliance with the provisions of the regulations by contracting parties;

(f) Reiterate that the rights of participation in fishing on the high seas must take into account the interests of coastal States and developing countries.

3. With regard to the third paragraph of the draft organization of work on possible means of strengthening the substance and methods of implementation of the Agreement, they:

(a) Support the clarifications or interpretations proposed in the Declaration of 22 May 2006 with regard to articles 4, 7, 21, 22 and 23, together with the others mentioned therein;

(b) Propose, as indicated, the negotiation of a binding flag State Agreement that implements the obligations arising from the United Nations Convention on the Law of the Sea and the Agreement itself;

(c) Stress that measures by regional fisheries management organizations to reduce fishing capacity must not affect States whose fisheries are in the process of being developed;

(d) Urge States participating in regional cooperation arrangements to provide accurate and timely data concerning fishing activities and biological aspects of resources, pursuant to article 5 (j) of the Agreement, which would facilitate the evaluation of the state of resources with a view to the adoption of effective and adequate conservation and management measures;

(e) Urge RFMOs to give preferential attention to the strengthening of scientific research with a view to adopting measures based on reliable data that are designed to maintain or restore stocks to levels that can produce the maximum sustainable yield in accordance with the provisions of article 5 (b);

(f) Stress that relevant social, economic and policy issues must be taken into account in the analysis of each fishery;

(g) Consider that, in line with the proposals put forward, the Conference should call for the prompt entry into force of the binding FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, for the entry into force of the South Pacific RFMO, and, in the meantime, for strict compliance with interim measures, and for the dissemination and improvement of fishing statistics that have been collected and archived by FAO, particularly those regarding catches. It should also promote the establishment of FAO guidelines for performance evaluation and implementation of the recommendations contained in the evaluations;

(h) Call for the adoption of the other measures proposed in the 2006 report and in the report submitted at the current session by the Secretary-General and FAO;

(i) Lastly, and with regard to the proposed continuation of the exercise, endorse the resumption of the Review Conference in another four years.

Lima, 5 May 2010